

# Federal decision could give Cargill new life: Jurisdiction over Saltworks site could pave way for development

February 18, 2015, 05:00 AM By [Bill Silverfarb](#) Daily Journal

Like 84

Environmentalists and lawmakers fear a pending decision by the U.S. Army Corps of Engineers could pave the way for future development at the Cargill Saltworks site in Redwood City.

The upcoming decision has prompted Bay Area lawmakers to urge the corps to stick with its previous decision that the salt ponds are “indeed waters of the United States under the Clean Water Act.”

Developer DMB Pacific Ventures withdrew its plans to construct 12,000 homes east of Highway 101 nearly three years ago and has been waiting for a response from both the corps and the Environmental Protection Agency as to whether the agencies have jurisdiction over the Saltworks site under the federal Clean Water Act.

The corps and the EPA, however, have been at odds since August over which agency has jurisdiction over the 1,400 acres of salt flats.

“The Environmental Protection Agency is a co-regulatory partner in the Clean Water Act implementation and needs to be fully consulted during the process of developing policy and legal interpretations,” U.S. Rep. Jackie Speier, D-San Mateo, wrote in a letter last week to Jo-Ellen Darcy, assistant secretary of the Army for Civil Works. The letter was signed by all of the Bay Area members of Congress, including Anna Eshoo, D-Palo Alto, and Mike Honda, D-San Jose.

It’s the first time federal lawmakers have taken a stand on the Saltworks project, said David Lewis, the executive director at Save the Bay.

“They are on record for the first time and that’s a big deal,” Lewis said about the federal lawmakers.

The EPA, Lewis said, should have the “final say” over jurisdiction.

Save the Bay hopes the Cargill site, which never got past the local approval stage, will one day become protected wetlands.

“They are not a willing seller yet but if they are denied the ability to build there then maybe they will donate the land,” Lewis said.

It should be a wildlife refuge, he said.

Speier said that if the corps does “relinquish” jurisdiction over the site it will be doing so without considering the consequences it will have on the Bay.

“One agency should not unilaterally issue a ruling that guts the Clean Water Act’s jurisdiction,” Speier wrote in a statement. “We strongly urge the corps to review their own precedents, provide due process and fully consult with the EPA, Congress and other stakeholders before they decide that certain sites are not worthy of protection.”

On Tuesday, however, an official with the EPA told the Daily Journal that the agency is working with the corps on the issue.

“The EPA is presently coordinating with the U.S. Army Corps of Engineers on this important question, carefully considering both the complex history of the site’s uses, and the need to protect the recreational, economic, wildlife habitat and public health and safety values of San Francisco Bay,” according to a statement by the U.S. EPA sent to the Daily Journal.

The regional spokeswoman for the corps, Torrie McAllister, said Tuesday that “there is no set date for when a decision will be issued for this complex jurisdictional determination.”

Under current zoning and permits, the only thing Cargill is allowed to do with the land is “make salt,” Lewis said.

Regardless of the federal jurisdiction decision, DMB will still have to get approval from the San Francisco Bay Conservation and Development Commission and the city itself to build on the site.

DMB unveiled plans for a smaller development on the site in 2012 but said it would first seek federal regulatory input before bringing the development back to the city.

Asking for the jurisdictional determination “doesn’t directly impact what the city does or doesn’t do but just because they approve it doesn’t mean it is in compliance with federal laws. The city could approve something we can’t build,” DMB attorney David Smith told the Daily Journal in 2012.

DMB was seeking to clear local hurdles first before getting federal approval of the project but is now starting with the feds first before bringing it back to the city.

It first proposed the development of a new neighborhood with up to 20,000 residents back in 2009.

Opponents of the project, including Redwood City Neighbors United, urged DMB in 2012 to “respect the community’s vision and stop wasting time and resources on entertaining a project that is both unnecessary and inappropriate.”

The San Francisco Bay shoreline is one of 28 “estuaries of national significance” in the Clean Water Act. Approximately 90 percent of the Bay’s historic tidal wetlands were lost over the 20th century, according to the EPA. The agency implements federal Clean Water Act permit programs that minimize adverse impacts from pollution, including dredge and fill, to tidal areas, streams and wetlands.

Cargill’s argument, Lewis said, that the federal agencies should give up control over the land is that the area has become “industrial byproduct discharge” and is not “water.”

Officials with DMB Cargill could not be reached for comment Tuesday.

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(650) 344-5200 ext. 102

**Congress of the United States**  
**Washington, DC 20515**

February 12, 2015

The Honorable Jo-Ellen Darcy  
Assistant Secretary of the Army for Civil Works  
108 Army Pentagon  
Washington, DC 20310-0108

Dear Secretary Darcy:

It has come to our attention that the U.S. Army Corps of Engineers ("Corps") is considering relinquishing federal Clean Water Act and Rivers and Harbors Act jurisdiction over the Redwood City Salt Plant site in Redwood City, California. We are concerned that this decision is being made without full consideration of the consequences for San Francisco Bay and the nation, and without appropriate consultation, due process, and consideration of the Corps' own previous determinations.

We are writing to urge the Corps to comply with the law. The Environmental Protection Agency (EPA) is a co-regulatory partner in the Clean Water Act implementation, and needs to be fully consulted during the process of developing policy and legal interpretations of the Clean Water Act Section 404, under which the Corps regulation of the Cargill site would fall. Any novel, unilateral re-interpretation of the Clean Water Act must not be created in secret, without opportunity for public input, formal consultation with the EPA, or Congressional approval.

We also urge the Corps to be consistent in its interpretation of statute. The Corps has previously indicated in a 2010 Preliminary Jurisdictional Determination (attached) that the Redwood City Salt Plant salt ponds are indeed Waters of the United States under the Clean Water Act and within the jurisdiction of the Rivers and Harbors Act. The Corps also determined in 2008 that the nearly-identical Napa Plant salt ponds just 50 miles north also fall under Clean Water Act and Rivers and Harbors Act jurisdiction. It would be remarkable for these precedents to not be given full consideration by the Corps in its upcoming Jurisdictional Determination.

Any major re-interpretations of the Clean Water Act must not occur without full public input and consultation between the Corps and EPA. We strongly urge the Corps to comply with the law in a consistent, transparent, and fair fashion.

Sincerely,

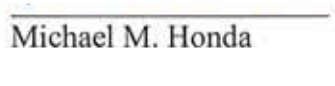
  
Jackie Speier

  
Mark DeSaulnier

  
Anna G. Eshoo


  
Sam Farr


  
John Garamendi


  
Michael M. Honda

  
Jared Huffman

  
Barbara Lee

  
Zoe Lofgren

  
Eric Swalwell

  
Mike Thompson

cc:

The Honorable John McHugh, Secretary, U.S. Army

The Honorable Gina McCarthy, U.S. EPA

Mr. Michael Boots, White House Council on Environmental Quality





DEPARTMENT OF THE ARMY  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
1455 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94103-1398

APR 14 2010

Regulatory Division

SUBJECT: File Number 26726S

Mr. David Smith  
DMB Associates, Inc.  
DMB Redwood City Salt Works  
1700 Seaport Boulevard, Suite 200  
Redwood City, California 94603

Dear Mr. Smith:

This letter is written in response to your initial submittal of November 12, 2009, and revised submittal of January 26, 2010, requesting a preliminary jurisdictional determination of the extent of areas that may be waters of the U.S. at your project site, the Redwood City salt production facilities and adjacent areas located north of US 101 and east of Seaport Boulevard in the City of Redwood City, San Mateo County, California.

Enclosed are maps showing the extent and location of waters and wetlands, entitled "USACE File # 26726S, Preliminary Jurisdictional Determination, DMB Redwood City Saltworks" in four sheets, dated February, 22, 2010. We have based this preliminary jurisdictional determination on the current conditions on the site as verified during a site visit performed by our staff on December 17, 2009. A change in those conditions may also change the extent of waters and wetlands that may be subject to our regulatory jurisdiction under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. This preliminary jurisdictional determination issued pursuant to the Regulatory Guidance Letter, RGL 08-02, can be used only to determine that wetlands or other water bodies that exist on your project site may be jurisdictional waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. Section 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403). The findings of this preliminary jurisdictional determination will be used to process an application for a Department of the Army permit to install structures or conduct work in navigable waters of the United States and/or discharge dredged or fill material into waters of the United States.

For purposes of computations of impacts, compensatory mitigation requirements and other resource protection measures, a permit decision made on the basis of a preliminary jurisdictional determination will treat all waters and wetlands on the site as if they are jurisdictional waters. Application for Corps authorization should be made to this office using the application form in the enclosed pamphlet. To avoid delays it is essential that you enter the file number at the top of

this letter into Item No. 1 of the application. The application must include plans showing the location, extent and character of the proposed activity, prepared in accordance with the requirements contained in this pamphlet. You are advised that preliminary jurisdictional determinations may not be appealed (see 33 C.F.R. Section 331.5(b)(9)). However, you may request an approved jurisdictional determination, which may be appealed, that precisely identifies the limits of Corps jurisdiction subject to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899. You may also provide new information for further consideration by the Corps to reevaluate this preliminary jurisdictional determination.

Should you have any questions regarding this matter, please call Katerina Galacatos of our Regulatory Division at 415-503-6778. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,

Jane M. Hicks  
Chief, Regulatory Division

Enclosures

Copies Furnished without enclosures:

CA RWQCB, Oakland, CA  
CA SWRCB, Sacramento, CA







# Legend



Study Area D



Sample Points

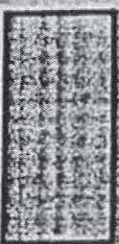


Facility Headquarters and Levees

## Presumed Jurisdictional Areas



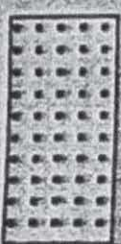
Bittern Complex



Crystallizer Complex



Pickle Complex



Multi-use Area Complex





U.S. Army  
Corps of Engineers  
San Francisco District  
Regulatory Division

## **Preliminary Jurisdictional Determination**

### **Locations of waters of the U.S. or wetlands pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899**

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DMB Redwood City Saltworks

located north of US 101 and east of Seaport Boulevard  
in the City of Redwood City, San Mateo County, California  
(portions of APN 054-310-160, 054-300-230 and 054-300-670)

Section 404 of the Clean Water Act other waters and  
Section 10 of the Rivers and Harbors Act of 1899 locations are:  
Bittern, Crystallizer, Pickle and Multi-Use Area Complexes

----- Project Boundary  
File Number: 26726S

Sheet 4 of 4  
Date: February 22, 2010